

THE SHERWIN-WILLIAMS COMPANY

Krylon CoverMaxx Spray Paints

Challenger: Rust-Oleum Corporation

Product Type: Household Products

Issues: Comparative Performance Claims; Labeling Claims; Puffery; Superiority Claims

Disposition: Substantiated

- **Whether a claim is puffery depends on the total context of the advertising. Obvious hyperbole, exaggerated displays of a manufacturer's pride in its product and other non-provable claims, the truth and accuracy of which cannot be determined, have been found to constitute puffery.**
- **As a general rule, absent extrinsic evidence that consumers have been confused or misled, NAD will not require an advertiser to change the name of a product.**

Basis of Inquiry: Express and implied claims made in advertising by The Sherwin-Williams Company ("Sherwin-Williams" or "the advertiser") for its line of Krylon CoverMaxx spray paints were challenged by Rust-Oleum Corporation ("Rust-Oleum" or "the challenger"), a competing manufacturer of spray paints. The following are representative of the claims that formed the basis of NAD's inquiry:

Express claims:

"CoverMaxx"

"maximum coverage"

"Ultimate Coverage" and "ultimate coverage"

Implied claims:

Sherwin-Williams's entire line of Krylon CoverMaxx spray paint provides superior paint coverage compared to leading manufacturers.

Challenger's Position:

Rust-Oleum challenged advertising for the entire line of Sherwin-Williams's Krylon CoverMaxx general purpose spray paints. The challenger argued that the CoverMaxx product label, website and other marketing materials make the unsubstantiated claim that CoverMaxx provides superior paint coverage to Rust-Oleum and other leading competitors.

I. The CoverMaxx Product Name Conveys a Performance Claim

Rust-Oleum maintained that the CoverMaxx product name, which combines the word "Cover" and the creatively misspelled word "Maxx" (meaning "max" or "maximum"), expressly informs consumers that the product provides the best coverage available among general purpose spray paints. According to the challenger, the "maximum coverage" messaging is particularly evident on the CoverMaxx spray paint cans where the product name is broken into its two component words. By running the word "Cover" vertically up the can and "Maxx" in oversized bold letters

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alongside it, the advertiser ensures that consumers read the product name as separate words. The express messaging is also reinforced by placing the claim “Ultimate Coverage” on the label directly beneath the product name. In addition, consumer reviews on both Sherwin-Williams’s and third party websites further demonstrate that the CoverMaxx product name conveys to consumers a superior coverage claim.¹

The challenger cited a recent decision by NAD (and affirmed by the National Advertising Review Board (“NARB”)), in which Sherwin-Williams brought a challenge against Rust-Oleum’s Painter’s Touch Ultra Cover 2x (“Ultra Cover 2X”) line.² In that case, NAD found that the Ultra Cover 2X portion of Rust-Oleum’s product name communicated the “express performance claim . . . that Painter’s Touch Ultra Cover 2X spray paints deliver twice the coverage of competing brands, including twice the coverage of [Sherwin-Williams’s various lines of general purpose spray paints].”³ NAD based its finding on the fact that Ultra Cover 2X combines the word “cover” (which NAD deemed a performance claim) with the comparative term “2X.”⁴ NARB affirmed NAD’s decision, holding that “the combination of ‘2X’ and ‘Ultra Cover’ in the [Painter’s Touch Ultra Cover 2X] product name reasonably conveys a claim that the product delivers twice the coverage of other spray paint products.” NARB elaborated that “[its] finding is based on the plain meaning of ‘2X’ (i.e., 2 times) as well as the plain meaning of the word ‘cover.’ . . . [NARB] believes that a double coverage performance claim is the natural reading of the product name.”⁵

According to Rust-Oleum, just as Ultra Cover 2X was found to make a superior “double” coverage claim, CoverMaxx also makes a superior “maximum” coverage claim. NAD and NARB reasoned that Rust-Oleum’s Painter’s Touch Ultra Cover 2X product name conveyed an express comparative performance claim because (i) the product name combines the word “Cover” with a quantifiable comparative term (“2X”), (ii) the quantifiable comparative term (“2X”) appears on the product label “far more prominent than any surrounding text”; and (iii) the product name appears on the product label alongside both the word “coverage” and a fully verbalized version of its comparative claim (“Double Cover”).⁶ Identically, here (i) Sherwin-Williams’s CoverMaxx product name combines the word “Cover” with a quantifiable comparative term (“Maxx” - meaning max or maximum); (ii) the quantifiable comparative term (“Maxx”) appears on the product label “far more prominent than any surrounding text”; and (iii) the product name appears on the product label alongside both the word “coverage” and a fully verbalized version of its comparative claim (“Ultimate Coverage”).

¹ The challenger cited various customer complaints regarding poor coverage, including: “COVERMAXX SHOULD BE ‘COVERSOME’” and “IDK [I don’t know] WHAT IT IS MAXX OF.”

² Citing Rust-Oleum Corporation (Painter’s Touch Ultra Cover 2X Spray Paint), Report #5934, *NAD/CARU Case Reports* (February 2016); Rust-Oleum Corporation (Painter’s Touch Ultra Cover 2X Spray Paint), NARB Panel #213 (July 2016).

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

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Rust-Oleum also pointed to NAD's recent decision in DulcoGas Maximum Strength ("DulcoGas")⁷ to support its argument that the CoverMaxx name conveys a performance claim. There, NAD determined that the DulcoGas product name was an express comparative claim. Given that both the DulcoGas and CoverMaxx product names combine the word "maximum" with a measurable product attribute (i.e., "strength" and "coverage," respectively), the challenger reasoned that NAD should similarly find that the CoverMaxx product name conveys an express comparative claim and recommend it be discontinued.

II. Sherwin-Williams's "Maximum Coverage" and "Ultimate Coverage" Claims Communicate an Express Superiority Claim

According to Rust-Oleum, the advertiser communicates to consumers that CoverMaxx provides superior coverage through means other than its product name. The advertiser also makes explicit "maximum coverage" claims on its marketing materials and various media. For example, on its CoverMaxx website page Sherwin-Williams expressly states that CoverMaxx paint provides "maximum coverage." In the CoverMaxx product information that it provides to retailers, Sherwin-Williams again makes an express "maximum coverage" claim. Likewise, in product information provided to retailers for its other spray paint products, the advertiser references "CoverMax technology that provides maximum coverage to various surfaces."

Rust-Oleum also noted that the advertiser prominently asserts on each of its CoverMaxx spray paint cans and related marketing materials that CoverMaxx provides "Ultimate Coverage." The challenger argued that "Ultimate Coverage" (or "ultimate coverage") is an express comparative line claim that tells consumers that every color and finish of CoverMaxx spray paint provides the best coverage of any spray paint in its class. Because Sherwin-Williams cannot substantiate a superior paint coverage claim for its CoverMaxx line of spray paints, the "maximum coverage" and "ultimate coverage" claims must be permanently discontinued.

Advertiser's Position:

In response to Rust-Oleum's challenge, the advertiser argued that the CoverMaxx product name, as well as the terms "maximum coverage" and "ultimate coverage," do not convey any message, express or implied, about competing spray paints, let alone a message that CoverMaxx is superior to competing spray paints.

I. The CoverMaxx Product Name is Not a Claim

A. Consumers Routinely Encounter and Dismiss as Puffery Product Names That Incorporate the Term "Max" or "Maxx"

⁷ Citing Boehringer Ingelheim Corporation (DulcoGas Maximum Strength), Report #5809, *NAD/CARU Case Reports* (January 2015).

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Sherwin-Williams argued that the CoverMaxx product name is puffery and does not communicate that the product provides better coverage than competing brands.⁸ The advertiser explained that the term “Maxx” connotes a sense of vastness without actually communicating a message about product performance. As a result, CoverMaxx falls into the category of product names that are fanciful and contain hyperbole such that consumers understand the name itself is not a claim about product performance.

Moreover, the inclusion of the term “max” in product names is widespread and, within the spray paint category alone, numerous competing products employ the term “max” in their names with no confusion or controversy. In support, Sherwin-Williams provided numerous examples of product names that contain the term “max” to establish that consumers routinely encounter, and dismiss as puffery, product names on par with CoverMaxx (e.g., KILZ MAX paint primer, Energizer MAX battery, Stayfree Dry Max feminine product).

B. NAD Has Never Found a “Max”/“Maxx”-Containing Product Name to Constitute a Superiority Claim

According to Sherwin-Williams, in NAD’s 45-year history, it evaluated at least 19 advertising campaigns for products whose names incorporate the term “max” and never once found such a name to communicate a superiority message. Even where NAD found unsupported superiority messages in other aspects of the challenged advertising, NAD never found that the product names were claims that required evidentiary support. Despite Rust-Oleum’s contention that NAD never considered whether a “max” or “maximum” product name communicated an express superiority claim, Sherwin-Williams explained that these 19 cases demonstrate that none of the prior challengers construed the terms “max” or “maximum” in a product name as comparative superiority claims. Moreover, NAD would not have remained silent if it believed that any of these product names were false claims.

Sherwin-Williams also distinguished the DulcoGas⁹ decision that Rust-Oleum cited to show that a “maximum” product name can convey a superiority message. According to the advertiser, the “maximum strength” designation challenged in that case was not the product name. In fact, the product name is DulcoGas and “maximum strength” is a descriptor that appeared on the front label beneath the name itself. Moreover, the term “maximum strength” is also a well-known moniker in the tightly regulated over-the-counter medicine (“OTC”) category and is known to refer to the maximum allowed dosage of various active ingredients, as set by the U.S. Food & Drug Administration (FDA). Whereas DulcoGas’ use of “maximum” is a straightforward assertion of an OTC product’s “strength,” Sherwin-Williams argued that CoverMaxx is a colloquial, evocative product name that uses the playful marketing term “Maxx.” For these reasons, the context and verbiage in DulcoGas is different than the claim at issue here.

⁸ Sherwin-Williams also dismissed Rust-Oleum’s reliance on anonymous consumer reviews as evidence that consumers perceived the name CoverMaxx to mean “maximum coverage,” noting that customer complaints hold no probative value.

⁹ Citing Boehringer Ingelheim Corporation (DulcoGas Maximum Strength), *supra* n.7.

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Finally, Sherwin-Williams observed that NAD has been consistently reluctant to require product name changes in the absence of extrinsic evidence showing deception, unless the name itself is an expressly false claim. In Rust-Oleum's prior Ultra Cover 2x case, for example, NAD found that the Ultra Cover 2X name communicated the expressly quantifiable and false message that the product provided "two times" the coverage as competing paints.¹⁰ The NARB, in the subsequent appeal, set forth criteria for recommending that an advertiser change a product name: the challenged claim must either be literally and explicitly comparative or there must be extrinsic evidence that comparative superiority is implied.¹¹ In the Rust-Oleum case, the NARB affirmed that the "2X Ultra Cover" claim was literally and explicitly comparative.¹² In contrast, Sherwin-Williams argued that the term CoverMaxx makes no quantifiable or other representations about the product's comparative performance.

II. Sherwin-Williams's Use of "Maximum Coverage" Does Not Convey a Comparative Message

A. Sherwin-Williams's Use of "Maximum Coverage" is Puffery

According to Sherwin-Williams, NAD has previously determined that the term "maximum" is puffery. In its Eureka Atlantis Extractor ("Eureka") decision, for example, NAD found that the advertiser's use of "Maximum suction power" – standing alone (i.e. not in a comparative context) – was mere puffery.¹³ NAD noted that the term "maximum" "does not indicate or suggest a measurable or quantifiable amount of suction."¹⁴ The advertiser also contended that the frequency with which consumers encountered such statements in the marketplace underscored NAD's conclusion that "maximum" would be understood as puffery and not as a quantifiable claim.¹⁵

The advertiser also observed that NAD reached a similar conclusion in its Fantom Twister Vacuum Cleaners ("Fantom") decision. There, NAD considered the claim that the advertiser's patented twister technology "helps maintain maximum suction power."¹⁶ In Fantom, NAD rejected the argument now advanced by Rust-Oleum, namely that the term "maximum," appearing in a monadic context, conveys a superiority message *vis-a-vis* competing products. Likewise, Sherwin-Williams asserted that no reasonable consumer would understand its "maximum coverage" statement as referencing competitors.

¹⁰ Citing Rust-Oleum Corporation (Painter's Touch Ultra Cover 2X Spray Paint), *supra* n. 2.

¹¹ Id.

¹² Id.

¹³ Citing Electrolux Home Care Products, Ltd. (Eureka Atlantis Extractor), Report #4561, *NAD/CARU Case Reports* (September 2006).

¹⁴ Id.

¹⁵ Specifically, NAD stated in Eureka that "[a] simple Google search revealed that in addition to describing the OptiHEAT, the term 'maximum suction' is used to describe various vacuum and cleaning machines manufactured by Bosch, Vac-U-Max, Bissell, Hoover, Dirt Devil and several others." Id.

¹⁶ Citing Euro-Pro Corporation (Fantom Twister Vacuum Cleaners), Report #4217, *NAD/CARU Case Reports* (August 2004).

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B. If Sherwin-Williams's Use of "Maximum Coverage" Conveys Any Message at All, the Message is Non-Comparative

To the extent that its use of "maximum coverage" conveys any message at all, the advertiser argued that such a message is non-comparative. At most, "maximum coverage" indicates a high level of coverage, rather than a measurable or quantifiable level of performance. Further, based on the plain language of the claim that CoverMaxx Primer "Seals, primes, and protects for maximum coverage," Sherwin-Williams rejected Rust-Oleum's assertion that the use of "maximum coverage" is a superiority claim targeting competing brands. According to the advertiser, if this statement communicates any substantive message at all, that message goes to the purpose of a primer: that by smoothing the surface and increasing paint adhesion, the product enhances top-coat coverage.

The advertiser also maintained that neither the "maximum coverage" statement, nor any surrounding context, makes reference or alludes to competing brands. It appears alongside other monadic statements that the product "Smooths uneven surfaces," "Increases Paint Adhesion," "Ensures true paint color is achieved," and "Features the EZ Touch 360 conical tip." The advertiser rejected Rust-Oleum's contention that these product descriptions are measurable comparative performance claims. Instead, the advertiser noted that these purported performance claims make no representations about competing products and merely indicate that the product provides a high level of coverage.

III. Sherwin-Williams's Use of "Ultimate Coverage" Does Not Convey a Comparative Message

A. Sherwin Williams's Use of "Ultimate Coverage" is Puffery

Sherwin-Williams noted that NAD has repeatedly found "ultimate" claims to be puffery. In a 2010 review of advertising for Maybelline Instant Rewind, for example, NAD determined that the claim "ultimate flawless perfection" was puffery.¹⁷ Similarly, in a 2013 review of advertising for Simmons mattresses, NAD found the claim that a mattress was "the ultimate in comfort" to be puffery.¹⁸ The advertiser also asserted that consumers are accustomed to encountering the term "ultimate" in advertising and understand it be puffery. Just as the ubiquity of the challenged "maximum suction" statement contributed to NAD's finding that "maximum suction" was puffery in its Eureka decision,¹⁹ the term "ultimate" is similarly widespread—and similarly dismissed by consumers as puffery.²⁰ Consequently, consumers encountering Sherwin-Williams's "ultimate coverage" statement will understand the statement to be non-quantifiable, non-comparative puffery.

¹⁷ Citing Maybelline New York, Inc. (Instant Age Rewind Eraser Treatment Makeup), Report #5241, *NAD/CARU Case Reports* (November 2010).

¹⁸ Citing Simmons Bedding Company (Simmons ComforPedic Beautyrest Mattresses), Report #5558, *NAD/CARU Case Reports* (February 2013).

¹⁹ Citing Electrolux Home Care Products, Ltd. (Eureka Atlantis Extractor), *supra* n. 13.

²⁰ Sherwin-Williams stated that numerous products across all categories (including paint) bear the term "ultimate," including, for example: Schick's "Xtreme 3 Ultimate" razor, Gold Bond's "Ultimate" hydrating lotion, Energizer's "Ultimate Lithium" battery, and Noxema's "Ultimate Clear" product.

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B. If Sherwin-Williams's Use of "Ultimate Coverage" Conveys Any Message at All, the Message is Non-Comparative

Finally, Sherwin-Williams asserted that the use of "ultimate" is unaccompanied by any express or implied references to competing products and a consumer who encounters the "ultimate coverage" statement would understand it to mean, at most, that the product provides a high level of coverage. Despite the challenger's contention that the CoverMaxx product label was comparative because it placed "Ultimate Coverage" adjacent to a "Fastest Dry Time" claim, the advertiser argued that when viewed as a whole this context is non-comparative. According to Sherwin-Williams, the "Ultimate Coverage" claim appears directly beneath the non-comparative product name and directly above a list of four product attributes: "Rust Protection," "Paint + Primer," "Durable Adhesion," and "Fastest Dry Time." The "Fastest Dry Time" phrase appears in the lower-right quadrant of the list of product attributes – far away from the "Ultimate Coverage" designation and against a different background. In addition to being visually disconnected from the "Ultimate Coverage" language, the "Fastest Dry Time" phrase does not relate to coverage. Therefore, the advertiser maintained that the context in which the "Ultimate Coverage" claim appears is entirely monadic.²¹

Decision:

I. Maximum Coverage Claim

NAD first considered whether the "maximum coverage" claim conveys a superior paint coverage message to consumers. The advertiser maintained that the claim is puffery and does not convey a comparative message. The challenger argued that "maximum coverage" appears adjacent to measurable comparative performance claims and expressly communicates to consumers that the CoverMaxx spray paints provide the best coverage of any spray paint in its class.²²

Here, the challenged language appears in the context of website advertising for the CoverMaxx Primer. The challenged claim states in its entirety that the CoverMaxx Primer "Seals, primes, and protects for maximum coverage." Beneath this statement are four bullet points: "Smooths uneven surfaces," "Increases Paint Adhesion," "Ensures true paint color is achieved," and "Features the EZ Touch 360 conical tip." NAD noted that a primer is a product that is used to

²¹ In Rust-Oleum's Reply Brief, the challenger referenced an unchallenged CoverMaxx commercial that features a CoverMaxx spray paint coverage demonstration, displays a CoverMaxx paint can (with its CoverMaxx and "Fastest Dry Time" claims visible), and makes the express numerical comparative claim that CoverMaxx provides "5X more rust protection than the leading competitor's top-selling paint" to demonstrate that the "maximum coverage" and "ultimate coverage" claims appear in the context of other quantifiable claims. In response, Sherwin-Williams explained that while the commercial contains a brief shot of the CoverMaxx front label, no consumer could possibly notice the small "ultimate coverage" language that appears on the front label, and that a "rust protection" claim has no relevance to a statement regarding "coverage."

²² In the briefings, the parties extensively debated whether consumers are so accustomed to seeing the word "maximum" and "ultimate" in conjunction with paint and other product advertising that consumers are likely to dismiss the terms as puffing. NAD noted that while perhaps this is true, the prevalence of the terms in the marketplace is not dispositive. Whether the term "maximum" or "ultimate" is considered puffery – or a superiority claim in need of substantiation – will likely depend on the context in which the term appears.

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prepare various surfaces for a subsequent layer of paint. It can help to seal, enhance coverage, ensure better adhesion, increase paint durability, and provide additional protections for the surface being painted.

NAD determined that “Seals, primes, and protects for maximum coverage” is a monadic claim that describes the purpose of the CoverMaxx Primer. The four bullet points beneath the “maximum coverage” claim are also non-comparative statements that provide additional details on how a primer enhances top coat coverage (and describe a design feature of the product). NAD found that the surrounding advertising makes no meaningful or measurable representations about superior spray paint coverage. Thus, it is unlikely that reasonable consumers would understand the “maximum coverage” claim to convey the message that CoverMaxx provides better paint coverage than competing brands.²³ Consequently, NAD determined that the “maximum coverage” claim in the context of the challenged advertising is a monadic performance claim and does not communicate a superiority message requiring substantiation.

II. Ultimate Coverage Claim

NAD next considered whether the “ultimate coverage” claim communicated a comparative message that CoverMaxx is superior to competing spray paints. The CoverMaxx product label includes the phrase “Ultimate Coverage” below the product name and above a list of four product attributes: “Rust Protection,” “Paint + Primer,” “Fastest Dry Time,” and “Durable Adhesion.” Similarly, website advertising states that “CoverMaxx Performance Paint provides rust protection, ultimate coverage and durable adhesion” and lists four bullet points: “Premium coverage and superior color,” “Fastest Dry Time,” “Paint + Primer in one,” and “Features Easy Push Spray Tip.” The advertiser maintained that the “ultimate coverage” claim is puffery and the context of its usage is non-comparative. The challenger contended that the “ultimate coverage” claim is expressly comparative and the “Fastest Dry Time” statement is a measurable performance claim.

As NAD has stated in numerous prior decisions, determining whether a claim is puffery is more an art than a science. Whether a specific claim falls within puffery’s protective reach is largely dependent on what is communicated (i.e., what, if any, consumer expectations are created).²⁴ Obvious hyperbole, exaggerated displays of a manufacturer’s pride in its product and other non-provable claims, the truth and accuracy of which cannot be determined, have been found to constitute puffery.²⁵ Generally speaking, these are claims for which reasonable consumers will not expect substantiation. Conversely, where an objective representation is made (i.e., termed in

²³ The challenger also identified an additional “maximum coverage” claim made on a third party retailers’ website stating, “CoverMax technology that provides maximum coverage to various surfaces.” NAD noted that the claim is made in connection with Sherwin-Williams’s ColorMaster Paint + Primer, which is a different line of spray paints than the challenged CoverMaxx products. NAD also observed that “CoverMax technology” is spelled differently than the challenged CoverMaxx spray paints and was uncertain whether the ColorMaster advertising refers to the product at issue here. Regardless, the “maximum coverage” language again appears in the non-comparative context of a primer product and, thus, the same analysis is applicable.

²⁴ See e.g., Philips Oral Healthcare, LLC (Sonicare Electric Toothbrushes), Report #5963, *NAD/CARU Case Reports* (June 2016).

²⁵ Id.

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fact rather than opinion) regarding the performance or other tangible attributes of a product that is sufficiently specific and material enough to create expectations in consumers, then substantiation for the claim is required.²⁶

NAD determined that the “ultimate coverage” claim in the context in which it appears in the CoverMaxx advertising is puffery. The claim itself is vague and fanciful and does not make any objective representation about the product’s comparative paint coverage. Further, none of the product attributes listed on the product label or website convey a meaningful or measurable message about the product’s paint coverage. Moreover, the “Fastest Dry Time” language cited by the challenger does not communicate a message about superior paint coverage.²⁷ As such, a reasonable consumer likely would understand the “ultimate coverage” claim to be hyperbole rather than a comparative performance claim. For these reasons, NAD found that the “ultimate coverage” claim as it appears in the context of the challenged advertising is puffery and does not require substantiation.

III. CoverMaxx Product Name

The challenger also contended that the CoverMaxx product name should be discontinued as it expressly conveys the message that the product provides superior spray paint coverage in comparison to leading competitors. As a general rule, absent extrinsic evidence that consumers have been confused or misled, NAD will not require an advertiser to change the name of a product simply because a challenger suspects that it may be misleading. NAD has consistently found that consumers appreciate the hyperbolic nature of product names.²⁸ However, where the product name makes an express claim which conveys a message that is not supported, extrinsic evidence of consumer confusion is not required to recommend a product name change.²⁹

NAD first noted that the challenger did not provide any reliable extrinsic evidence that consumers are confused or misled by the name CoverMaxx. While the challenger did cite to online product reviews as support for its argument that the name CoverMaxx conveys a superior paint coverage claim to consumers, NAD has consistently observed that evidence based solely on the experience of individual consumers is anecdotal and insufficient to demonstrate consumer confusion.³⁰

²⁶ Id.

²⁷ In its Reply brief, the challenger also referenced an unchallenged CoverMaxx commercial that features a product demonstration, an image of the CoverMaxx can, and a “5X more rust protection than the leading competitor’s top-selling paint” claim. Rust-Oleum argued that this claim provided further support that the “Ultimate Coverage” claim was comparative. NAD noted that like “Fastest Dry Time,” the “5X more rust protection” statement does not communicate a message about superior paint coverage.

²⁸ Pactive Corporation (Hefty OdorBlock Trash Bags), Report #5105, *NAD/CARU Case Reports* (November 2009); The Gillette Company (Venus Divine Shaving System for Women), Report #4305, *NAD/CARU Case Reports* (April 2005).

²⁹ Rust-Oleum Corporation (Painter’s Touch Ultra Cover 2X Spray Paint), *supra* n. 2.

³⁰ See e.g., Charter Communications, Inc. (Advertising by Charter Communications, Inc.), Case #5922, *NAD/CARU Case Reports* (February 2016); Oracle Corporation (9i Collaboration Suite), Report #4117, *NAD/CARU Case Reports* (November 2003).

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NAD next considered whether the CoverMaxx product name communicates an express performance claim. In the prior Rust-Oleum decision, both NAD and the NARB determined that the Ultra Cover 2X name conveyed a message that the product delivers twice the coverage of other spray paint brands.³¹ The NARB panel based its findings on the plain meaning of the “2X” (i.e., 2 times) as well as the plain meaning of the word “cover.”³² Similarly, in One-A-Day All-Day Energy, NAD and the NARB panel determined that the product name All-Day Energy communicated a “clear, specific and objectively provable statement as to duration.”³³ By contrast, in the Crest Sensi-Stop Strips matter, NAD did not recommend a name change because the Sensi-Stop product name did not articulate a clear or provable statement. NAD further recognized that the abbreviated use of the prefix “Sensi” (short for “sensitive”) underscored that the name is not a specific claim to be taken literally.³⁴ Likewise, in the Arthri-D3 matter, NAD found that the product name, Arthri-D3, did not convey the message that the product treats arthritis given the absence of a clear, specific claim that it provides relief from arthritis.³⁵

Here, NAD determined that the CoverMaxx product name is not likely to be interpreted as an express claim that the product delivers superior paint coverage compared to other leading spray paint products. In contrast to the product names Ultra Cover 2X and All-Day Energy, the CoverMaxx name is vague and does not convey a clear, specific and measurable message about product performance. Moreover, like the term “Sensi” in Crest Sensi-Stop Strips, the shortened and imaginative use of the term “Maxx” also demonstrates that the CoverMaxx product name is not a literal expression of spray paint performance.

NAD also considered whether its decision in DulcoGas, cited by the challenger, was relevant to the instant case. There, NAD reviewed a “maximum strength” claim that appeared on the label of an OTC product. As an initial matter, it is not clear to NAD that the “maximum strength” claim was a component of the product’s name; instead, the term appears to be a product descriptor listed on the label. Regardless, the term “maximum strength” is an OTC dosage standard that is regulated by the FDA and its appearance in a product name is likely to convey the message that each pill (dose) contains the maximum daily dose of medication as set forth by the controlling FDA monograph. The CoverMaxx product name at issue here is a fanciful name for a spray paint product, not a content claim regarding the active ingredient in a medicine, and thus, the DulcoGas decision is not relevant to the instant matter.

Finally, NAD considered whether claims on the CoverMaxx product packaging and other advertising, when taken together with the product name, convey the message that CoverMaxx is superior to competing spray paints. To demonstrate that the CoverMaxx advertising is expressly comparative, the challenger pointed to the “Ultimate Coverage” and “Fastest Dry Time” claims on the product label, as well as website claims that the product “Increases paint adhesion.” As noted above, NAD found that the “Ultimate Coverage” claim and the “Fastest Dry Time” claim

³¹ Rust-Oleum Corporation (Painter’s Touch Ultra Cover 2X Spray Paint), *supra* n. 2.

³² Rust-Oleum Corporation (Painter’s Touch Ultra Cover 2X Spray Paint), *supra* n. 2.

³³ Bayer Consumer Healthcare (One-A-Day All-Day Energy), Case #4684, *NAD/CARU Case Reports* (June 2007); Bayer Consumer Healthcare (One-A-Day All Day Energy), NARB Panel #145 (November 2007).

³⁴ Proctor & Gamble Company (Crest Sensi-Stop Strips), Case #5828, *NAD/CARU Case Reports* (April 2015).

³⁵ Arthri-D, LLC (Arthri-D3), Report #5871, *NAD/CARU Case Reports* (July 2015).

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on the product label do not reasonably convey the message that the CoverMaxx product provides better coverage than competing brands of spray paint. Further, NAD determined that the “Increases Paint Adhesion” claim, in the context of advertising for the CoverMaxx Primer, is also non-comparative and merely describes the purpose and function of a primer.

Given the absence of extrinsic evidence that consumers are misled by the CoverMaxx name, NAD’s finding that the name standing alone does not convey an express performance message, and the non-comparative context of the surrounding advertising, NAD determined that there was no basis to recommend a product name change.

Conclusion:

NAD found that the challenged advertising did not communicate a message of superior paint coverage requiring substantiation.

Advertiser’s Statement:

Sherwin-Williams is pleased that NAD found in favor of Sherwin-Williams on all challenged claims, finding that neither its Krylon CoverMaxx product name nor any of the challenged Krylon CoverMaxx advertising materials communicates any misleading or unsubstantiated message. As a long-time supporter of the self-regulatory process, Sherwin-Williams thanks NAD for its thorough and careful review. **(#6074 RL, closed 04/12/2017)**